ATTORNEY GENERAL OF TEXAS
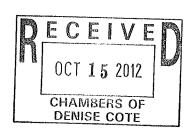GREG ABBOTT

October 15, 2012

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OCT 15 2012
CHAMBERS OF
DENISE COTE

The Honorable Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street, Room 1610
New York, NY 10007-1312

Via E-mail

Re: *The State of Texas et al. v. Penguin Group (USA) Inc. et al.*, No. 12-cv-03394 (DLC); *In re Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC)

Dear Judge Cote:

I write in response to the Defendants' request during the October 9, 2012 telephone conference that the Plaintiff States clarify their position as to whether Penguin and Macmillan's e-book distribution contracts with Apple establish "genuine" agency relationships between the publishers and Apple. Plaintiff States do not intend to challenge whether Penguin and Macmillan's e-book distribution contracts at issue in this case establish genuine agency relationships with the e-book distribution Outlets. Rather, the Plaintiff States have alleged that, as part their conspiracy to fix prices of, or otherwise restrain trade in, e-books, the conspiring publishers (including Penguin and Macmillan) and Apple agreed that the conspiring publishers "would collectively impose the Agency Model of distribution on all of their Outlets." Plaintiff States' Second Amended Complaint ¶ 58. This change in distribution would confer retail pricing authority to the Publishers at each of these Outlets. *Id.*

Plaintiff States have asserted that all consumers in their respective states are direct purchasers. In the event that any Defendant asserts that consumers are indirect purchasers under *Illinois Brick*, the Plaintiff States reserve their right to reconsider their stance on the agency relationship issue.

Respectfully,

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    Counsel for Plaintiff United States
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